IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1782 OF 1998

Century Rayon ...Plaintiffs

Versus

M/s.Dunlop India Ltd. ...Defendants

Shri Sachin Pujari i/by Shri M.L.Bansal for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 09, 2007.

ORAL JUDGMENT:

1. The suit was listed under the caption of "Undefended Suits for Exparte Decree". The learned counsel for the Plaintiffs has tendered on record affidavit in lieu of evidence of Shri Ramesh Lalwani, Joint President (Commercial) of the Plaintiffs. The said affidavit is marked "X" for identification and is taken on record. The learned counsel for the Plaintiffs has also tendered on record a compilation of ten original documents. The said compilation is marked "Y" (collectively) for identification and is taken on record.

2. The Plaintiffs carry on business of manufacturing and selling of Rayon Tyre Yarn. The Defendants are carrying on business of manufacturing and sale of tyres. The suit is filed for recovery of the

price of the goods sold and delivered by the Plaintiffs to the Defendants.

3. According to the case of the Plaintiffs from July 1997 to October 1997 from time to time they have sold and delivered to the Defendants and the Defendants have purchased and received from the Plaintiffs Viscose Rayon Tyre Yarn. The goods have been sold and delivered by the Plaintiffs to the Defendants at the agreed price as per the bills dated 23rd July, 1997, 28th July, 1997, 08th August, 1997, 05th September, 1997, 09th September, 1997, 24th September, 1997 and 24th October, 1997 respectively, the price of which has been mentioned in paragraph No.5 of the plaint. It is contended that save and except a part payment towards the first bill dated 23rd July, 1997, no further payment has been made by the Defendants.

4. According to the case of the Plaintiffs they have kept and maintained an account of the Defendants in which they have debited price of the goods sold and delivered. It is stated that in the said account they have given credit for the part payments made by the Defendants. According to the case of the Plaintiffs, on taking accounts as on 24th October, 1997, a sum of Rs.39,53,562/- is found due and payable by the

Defendants to the Plaintiffs at the foot of the Defendants' account. It is contended that as per the usual practice of market and custom of the trade, the Defendants are liable to pay interest at the rate of 21% per annum on the unpaid amount. The said interest calculated up to 20th March, 1998 is Rs.3,24,13/-. By letter dated 27th January, 1998 the Plaintiffs called upon the Defendants to pay the said amount. It is stated that there was no response to the said letter. Ultimately, the Plaintiffs by their Advocates notice dated 07th March, 1998 called upon the Defendants to pay the said dues together with overdue interest.

5. In the affidavit of evidence, Shri Ramesh Lalwani has stated that except for payment of Rs.58,226/- made by the Defendants in part payment of the first bill dated 23rd July, 1997, no other amount has been paid. The Plaintiffs have produced office copies of the aforesaid seven bills in respect of the goods sold and delivered to the Defendants. Shri Lalwani has identified the signature of Shri O.P.Sharma, Warehouse Officer of the Plaintiffs on the said bills. The contents of the said bills have been duly proved by the said affidavit.

6. The Plaintiffs have also placed on record a copy

of letter dated 27th January, 1998. In the affidavit of evidence it is stated that the original postal acknowledgment of the said letter has been misplaced and a xerox copy thereof has been produced. The Plaintiffs have made out case for leading secondary evidence of said postal acknowledgment by producing a xerox copy thereof. It is stated in the affidavit that the postal acknowledgment of advocate's notice dated 07th March, 1998 has been misplaced. The Plaintiff has also produced extract of account of Defendants maintained by them. The extract of account shows the outstanding amount of Rs.39,52,562/- due and payable by the Defendants to the Plaintiffs.

7. Thus, the claim for recovery of the aforesaid amount has been duly established by the Plaintiffs. There is no specific agreement between parties as regards payment of interest on the unpaid bills. Therefore, interest claimed at the rate of 24% per annum from the date of institution of the suit till realisation of payment cannot be granted and the interest will have to be granted at the rate of 12% per annum.

8. Hence, the suit is decreed as prayed with a modification that interest payable on the sum of

Rs.39,52,562/- shall be at the rate of 12% per annum from the date of institution of the suit till realisation or payment.

9. The Plaintiffs will be entitled to refund of court fees as per the rules.

10. Certified copy is expedited.

JUDGE